

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5888 of 2007()

(CRIME NO. 643/2007 of NEDUMANGADU POLICE STATION)

PETITIONER/ACCUSED:

1. RAJESH, AGED 22 YEARS,
S/O. ARJUNAN, THALAKKONATHU PUTHEN VEEDU,
IRAYANCODE, CHERIYAKONNI, TRIVANDRUM.
2. SURENDRAN @ KUTTAPPAN, AGED 37 YEARS,
S/O. APPUKKUTTAN NADAR, SUDHEESH BHAVAN,
IRAYANCODE, CHERIYAKONNI, TRIVANDRUM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI. K. SATHEESHKUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
= = = = =
B.A.No. 5888 of 2007
= = = = =

Dated this the 1st day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 3 and 4. Altogether there are 4 accused persons. The accused 1 and 2 have already been arrested. The crux of the allegations against the petitioners is that they caused injuries to the de facto complainant by attacking him with dangerous weapon. The alleged incident took place on 26.8.07. Crime has been registered. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners may in these circumstances be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. Investigation is already complete. Final report has been filed. There is absolutely no circumstance in this case justifying invocation of the extraordinary equitable discretion under Section 438, submits the learned Public Prosecutor. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs I find merit in the

opposition by the learned Public Prosecutor. Wound certificate has been placed before me . Allegations have already been read over me and I am not persuaded to issue any directions under Sec.438 Cr.P.C

5. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

6. It is said that there is a counter case also. That fact does not also persuade me now to invoke extraordinary equitable discretion under Section 438 Cr.P.C.

7. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously- on the date of surrender itself.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE